No. 83-663

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IN THE

Supreme Court of the United States

October Term, 1983

THE STATE OF NEW YORK and JAMES L. LAROCCA, as Commissioner of the Department of Transportation of the State of New York,

Petitioners,

against

THE UNITED STATES OF AMERICA,

Respondent,

and

BEECHCRAFT EAST, INC.,

Respondent.

JAMES L. LAROCCA, as Commissioner of the Department of Transportation of the State of New York,

Petitioner,

against

AIRCRAFT OWNERS AND PILOTS ASSOCIATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY TO BRIEF FOR RESPONDENT BEECHCRAFT EAST, INC.

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ARGUMENT

Respondent Beechcraft East, Inc. ("Beechcraft") repeats two arguments offered by respondent the United States of America: first, federal equity courts may only inspect available federal remedies and second, Beechcraft's federal remedy at law is inadequate because the Eleventh Amendment forecloses monetary relief. *Compare* Brief For Respondent Beechcraft East, Inc. ("Beechcraft brief") at 5-7 *with* Brief For the United States In Opposition ("United States brief") at 5-10. Petitioners refuted these arguments in their petition and their brief in reply to the United States brief. Beechcraft also argues that the lower courts found facts in the record which establish its irreparable injury independent of the Eleventh Amendment bar. Beechcraft brief at 4-5 and 7. Here, we refute this argument which transforms the lower courts' erroneous conclusion of law—"absolute . . . irreparability" because of the Eleventh Amendment—into a finding of fact. App. A at 4a.† *See also* App. C at 22a & n.9.

1. The only evidence Beechcraft provided on the preliminary injunction motion, and which it recites to this Court, were letters from 27 customers. *See* Beechcraft brief at 3 and 7 & n.2.* These customers had contracted to use Beechcraft's services as a fixed based operator at Republic Airport and in their letters allegedly threatened to cancel their agreements with Beechcraft if the curfew were not enjoined. *Id. See* petition at 4-5. Beechcraft

† References preceded by "App." identify the letter appendix and page of the appendices to the petition.

* The difference between petitioners' reference to 25 letters (petition at 4) and Beechcraft's reference to 27 letters results from Beechcraft's count of 2 letters which are not from customers. *See* App. C at 21a & n.8.

argued, and argues here, that the letters showed that the curfew would destroy its business *pendente lite*, a demonstration required under the Second Circuit irreparable injury test. *Sperry Int'l Trade* v. *Israel*, 670 F.2d 8, 12 (2d Cir. 1982); *Buffalo Courier-Express* v. *Buffalo Evening News*, 601 F.2d 48, 58 (2d Cir. 1979). *See also* petition at 4. The district court did not accept this argument. If it made a finding on the extent of Beechcraft's damages at all, it found that Beechcraft's alleged loss was, at most, "only a small percentage of Beechcraft's nation-wide and international revenue. . . ." App. C at 22a.* The court did not make, and could not have made, any other finding of fact on the evidence submitted. Beechcraft had not alleged any facts to show how the loss of customer revenues, allegedly affected by the curfew, would have a substantial impact on its financial health. Rather, irreparable injury was held to be present as a matter of law, not fact, because of the Eleventh Amendment bar. *Id.* at n.9.

2. On the vacatur motion, the district court made no additional findings of fact. *See* Transcript Of Proceeding on November 19, 1982 ("Transcript"). Having had the benefit of discovery, petitioners showed the court that Beechcraft, as a fixed based operator, actual had 200-230 customers and that it derived a maximum of $300,000 of its $21 million total revenue from this aspect of its business. In contrast, Beechcraft's aircraft sales department accounted for $16 million, by far the largest part of its total

* The court's statement that "a party [need not] wait until near extinction before moving for a preliminary injunction" (App. C at 22a-23a) refers to this "small" loss. It is not a finding that Beechcraft faced the imminent destruction of its business and does not purport to be. *Contrast* Beechcraft brief at 5 & n.7 and 7 & n.2, and United States brief at 8 & n.3.

revenue. *See* petition at 6-7. Petitioners also offered to prove that Beechcraft was financially healthy and the court accepted that offer, characterizing it as showing that Beechcraft was not "near bankruptcy." Transcript at 18.* The court refused petitioners' request for an evidentiary hearing as irrelevant given its earlier holding that the Eleventh Amendment precluded the award of "compensatory damages" (App. C at 22a & n.9) and its new holding that the New York State Court of Claims also was without jurisdiction. *Id.* at 18-19. On appeal, Beechcraft did not contest the one possible district court finding of fact concerning the extent of its injury—"small" money loss. The court of appeals made no new finding when it affirmed the district court's order denying the vacatur motion. App. A at 3a.

3. Beechcraft's failure on its preliminary injunction motion to show any nexus between the alleged customer loss and its purported business destruction obviated the need for petitioners to request an evidentiary hearing. *Contrast* Beechcraft brief at 7. On the vacatur motion, petitioners, anticipating that Beechcraft might seek to controvert their factual proof, the result of discovery, requested an evidentiary hearing. The district court's refusal to grant petitioners' request limited the factual record to the findings made on the preliminary injunction, namely, Beechcraft's loss of 25 customers was, at best, a "small" part of its total business. App. C at 22a. The district court's determina-

* Petitioners offered to show, *inter alia*: (1) Beechcraft had retained earnings of approximately $583,000, had no long term debt and had a reserve for bonuses; (2) $3.8 million of Beechcraft's current liabilities were owed to its parent company; and (3) if Beechcraft did not realize revenues from its principal department, aircraft sales, it would fail regardless of what happened with the fixed based operation aspect of its business. Transcript at 16-18.

tion in this regard illustrates that its decision, like that of the court of appeals, depended entirely on the erroneous legal theory that the Eleventh Amendment, not the effect of the curfew on Beechcraft's business, created an injury of "absolute . . . irreparability." App. A at 4a.

Conclusion

For the foregoing reasons and those previously set forth in the petition and in the reply to the United States brief, the petition should be granted, and the judgment of the court of appeals summarily reversed.

Dated: New York, New York
March 28, 1984

Respectfully submitted,

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